IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 31329 of 2007(D)

PETITIONER:

SATHEESH K.PANICKER
NAYITHANIL HOUSE,
VECHOOCHIRA P.O., KUNNAM,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.M.V.S.NAMBOOTHIRY

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF LOCAL ADMINISTRATION, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE KERALA STATE ELECTION COMMISSION, REPRESENTED BY ITS SECRETARY, OFFICE OF THE ELECTION COMMISSION, THIRUVANANTHAPURAM.

3. THE ASST. REGISTRAR(GENERAL),
CO-OPERATIVE DEPARTMENT, RANNI.
(RETURNING OFFICER FOR ELECTION OF VICE PRESIDENT,
VECHOOCHIRA GRAMA PANCHAYAT).

R1 BY GOVT. PLEADER MR.K.J.MOHAMMED ANZAR
R2 BY ADV.MR.MURALI PURUSHOTHAMAN, S.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.31329 of 2007

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Dated: 22nd October, 2007

JUDGMENT

In this Writ Petition under Article 226 of the Constitution the petitioner who was elected as the Vice President of Vechoochira Grama Panchayat inter alia seeks a direction to the respondents, namely, the State of Kerala and the Kerala State Election Commission to take immediate steps to enable the petitioner to take oath and assume office as Vice President of Vechoochira Grama Panchayat. The interim relief sought for is that respondents 1 and 2 be directed to appoint an officer to administer oath to the petitioner. Referring to sub-section (13) of Section 153 of the Kerala Panchayat Raj Act, the petitioner points out that the President before entering upon the office is to take Oath before the officer authorised by the Government in this behalf and the Vice President before the President. The petitioner points out that the President of the Panchayat has been voted out and the situation obtaining presently is that the Panchayat has no President which means that there is nobody to administer Oath to the petitioner. The petitioner then refers to Sub-section (13) (a) which says that the Election Commission may declare the office of the President or the Vice

Presidennt, as the case may be, as vacated on his own motion where the person has not entered upon his office without sufficient cause by taking Oath within a period of 15 days from the date he was declared as elected as the President or Vice President of the Panchayat. The petitioner was elected as Vice President on 11.10.2007 and the apprehension of the petitioner is that unless he takes Oath before 26.10.2007, he stands the risk of being compelled to vacate the office on the basis of the declaration that may be issued by the Election Commission.

2. The 2nd respondent, the Kerala State Election Commission has filed a detailed statement wherein it is conceded that the President of the Panchayat has been voted out and as matters obtain now the Panchayat has no President. As per Annexure-A, the election of the Panchayat President has been notified and 6.11.2007 has been fixed as the date on which the new President will be elected. It is thus clear that the Panchayat is not going to have President before 6.11.2007.

3. Heard Mr.M.V.S.Nampoothiry, counsel for the petitioner and Mr.Murali Purushothaman, Standing Counsel for the Kerala State Election Commission.

4. It is not correct to say that the moment that the 15 days period expires from the date of the election, the President or Vice President, as the case may be, will entail forfeiture of his post due to the reason that Oath has not been taken. As per sub-section (13) (a) of Section 153 of the Kerala Panchayat Raj Act, the State Election Commission has the power to declare that the office of the President or Vice President of a Grama Panchayat, as the case may be, has vacated on his own motion where the person has not entered upon his office without sufficient cause by taking Oath with a period of 15 days from the date he was declared as elected as President or Vice President. I have no difficulty to find that on the facts which obtain in this case the petitioner has 'sufficient cause' for not assuming office after taking Oath or affirmation, as the case may be.The Election Commission has already taken steps to conduct election to the office of the President of the Panchayat and the meeting for the same will be convened by the third respondent on 6.11.2007. Till such time as a new President is elected pursuant to Annexure-A or any subsequent notification, the petitioner will continue to have 'sufficient cause' for the purpose of sub-section (13) (a) of Section 153 of the Kerala Panchayat Raj Act. So the petitioner need not have any apprehension

in his mind. Once a new President is elected as per Annexure-A and takes Oath, that President will do the needful to administer Oath to the petitioner. Till then the petitioner will continue to be the Vice President elect.

The Writ Petition is disposed of as above.

srd **PIUS C.KURIAKOSE, JUDGE**